

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

JOY MARIE JENKINS

Registered Nurse License No. 595747

Respondent.

Case No. 2012-156

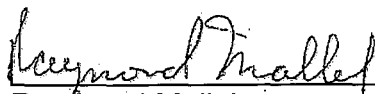
OAH No. 2011110587

ORDER DENYING RECONSIDERATION

The effective date of the decision in the above-entitled matter having heretofore been stayed through October 29, 2012, for the purpose of determining whether your request for reconsideration of said decision should be granted; since no action was taken by the Board within the time allowed for ordering reconsideration, the petition for reconsideration is deemed denied by operation of law pursuant to Government Code section 11521(a). The Board's Decision issued on September 19, 2012, becomes effective on October 29, 2012.

IT IS SO ORDERED this 29th day of October 2012.

BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


Raymond Mallel
Board President

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

JOY MARIE JENKINS
139 Mandalay Court
Chico, CA 95973

Registered Nurse License No. 595747

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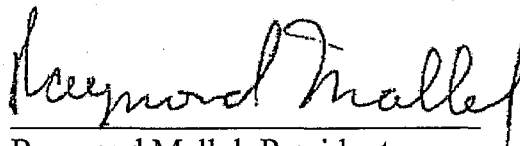
OAH No. 2011110587

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on October 19, 2012.

IT IS SO ORDERED this 19th day of September, 2012.



Raymond Mallel, President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended
Accusation Against:

JOY MARIE JENKINS
Chico, CA 95973

Registered Nurse License No. 595747

Respondent.

Case No. 2012- 156

OAH No. 2011110587

PROPOSED DECISION

Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California, on June 6, 2012.

Complainant was represented by Brian S. Turner, Deputy Attorney General.

Respondent, Joy Marie Jenkins, was represented by Tracy Davis, Attorney at Law.

Evidence was received and the record remained open until June 8, 2012, to allow respondent to file signed copies of letters of reference. Respondent timely filed the letters which were admitted in evidence as Exhibits A through F.¹ The record was closed and the matter was submitted for decision on June 8, 2012.

PROCEDURAL FINDINGS

1. On September 9, 2011, complainant Louise R. Bailey, M.ED., R.N., made and filed the Accusation against respondent in her official capacity as Executive Officer, Board of Registered Nursing (Board), Department of Consumer Affairs, State of California. At hearing, complainant requested and was granted leave to file a First Amended Accusation.

¹ Exhibits A through F were admitted as "administrative hearsay" under Government Code section 11513, subdivision (d).

On June 21, 2012, Gracie Benn made the First Amended Accusation, on behalf of Louise R. Bailey, and caused it to be filed on July 2, 2012.

2. On March 6, 2002, the Board issued Registered Nurse License Number 595747 to Joy Marie Jenkins (respondent). Respondent's registered nurse license was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2013, unless renewed.

3. Respondent timely filed a Notice of Defense to the Accusation. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

4. At hearing, respondent stipulated to the truth of the allegations in the First Amended Accusation. Complainant accepted the stipulation.

FACTUAL FINDINGS

1. "Percocet," a brand of oxycodone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(N).

2. "Dilaudid," a brand of hydromorphone, is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(K).

3. "Norco," a brand of hydrocodone bitartrate and acetaminophen, is a Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

4. Respondent was employed as a registered nurse in the Oncology Department at Enloe Medical Center (Enloe) in Chico, California. In mid-2007, Enloe's Director of Pharmacy ran an "anomalous usage" report on the Pyxis MedStation (Pyxis), a computerized medication dispensing system requiring password sign-on for access. The report showed that in June 2006, respondent withdrew a much higher number of Schedule II narcotics, when compared to other nurses working in the same unit. Based on the report, Enloe audited respondent's patient records for June and July 2006 and found discrepancies in that narcotics were not accounted for inpatient records. Respondent was disciplined with a "written counseling."

5. On May 10, 2008, Enloe's Director of Pharmacy ran another anomalous usage report which showed that respondent withdrew a much higher number of Schedule II narcotics, when compared to other nurses working in the same unit. The report was sent to Enloe's Quality Management Team for further analysis and audit. The team found that respondent had not been documenting her narcotics administration, leaving a large number of scheduled narcotics unaccounted for. An audit of respondent's withdrawal of Schedule II-V controlled substances was made from February 5, 2008 through May 5, 2008. Over this

period respondent had withdrawn a total of 150 doses of Schedule II-V from the Pyxis and had not documented 108 doses on the patients' medication administration records (MARs).

6. Respondent was confronted with her discrepancies on May 13, 2008, and denied there were discrepancies. She met with Enloe supervisory staff on May 15, 2008, and admitted that she had diverted medication for her own use.

7. Enloe filed a complaint with the Board on May 19, 2008. Board Senior Investigator Robert Anderson noted the large volume of documented discrepancies, 108 between February 5, 2008 and May 4, 2008. He "narrowed the focus" to three patients (Patients A, B and C). Mr. Anderson documented that between March 7, 2008, and April 30, 2008, respondent made Pyxis withdrawals and failed to properly chart administration of controlled substances as follows:

Patient A

- a. On April 4, 2008, at 2323 hours, respondent withdrew 2 Percocet tablets from the Pyxis for the patient when the physician's order called for the administration of only one Percocet tablet to the patient. Respondent failed to chart the administration of the Percocet on the patient's MAR and otherwise account for the disposition of the 2 Percocet tablets.
- b. On April 5, 2008, at 0303 hours, respondent withdrew 2 Percocet tablets from the Pyxis for the patient when the physician's order called for the administration of only one Percocet tablet to the patient. Respondent failed to chart the administration of the Percocet on the patient's MAR and otherwise account for the disposition of the 2 Percocet tablets.
- c. On April 9, 2008, at 0106 hours, respondent withdrew 1 Percocet tablet from the Pyxis for the patient and another Percocet tablet at 0329 hours when the physician's order called for the administration of 1 Percocet tablet every 4 hours as needed. Respondent failed to chart the administration of the Percocet on the patient's MAR and otherwise account for the disposition of the 2 Percocet tablets.
- d. On April 11, 2008, at 2145 hours, respondent withdrew 1 Percocet tablet from the Pyxis for the patient, but failed to chart the administration of the Percocet on the patient's MAR and otherwise account for the disposition of the 1 Percocet tablet.
- e. On April 12, 2008, at 0414 hours, respondent withdrew 2 Percocet tablets from the Pyxis for the patient when the physician's order called for the administration of only one Percocet tablet to the patient. Respondent failed to chart the administration of the Percocet on the patient's MAR and otherwise account for the disposition of the 2 Percocet tablets.
- f. On April 15, 2008, at 2133 hours, respondent withdrew 2 Percocet tablets from the Pyxis for the patient, but failed to chart the administration of the Percocet on the patient's MAR and otherwise account for the disposition of the 2 Percocet tablets.

Patient B

- g. On March 7, 2008, at 1959 hours, respondent withdrew a 1 ml syringe of Dilaudid from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's MAR and otherwise account for the disposition of the 1 ml syringe of Dilaudid.
- h. On March 7, 2008, at 2314 hours, respondent withdrew a 1 ml syringe of Dilaudid from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's MAR and otherwise account for the disposition of the 1 ml syringe of Dilaudid.
- i. On March 7, 2008, at 2314 hours, respondent withdrew 1 Norco tablet from the Pyxis for the patient. On March 8, 2008, between 0230 hours and 0431 hours, respondent withdrew an additional 3 tablets of Norco, for a total of 4 tablets of the medication over a period of approximately 5 and a quarter hours. The physician's order called for the administration of only *1 tablet of Norco* to the patient every *4 hours* as needed. Respondent failed to chart the administration of any of the Norco on the patient's MAR and otherwise account for the disposition of the 4 Norco tablets.
- j. On March 8, 2008, at 0324 hours, respondent withdrew a 1 ml syringe of Dilaudid from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the patient's MAR and otherwise account for the disposition of the 1 ml syringe of Dilaudid.

Patient C

- k. On April 29, 2008, between 2137 and 2326 hours, respondent withdrew a total of 4 Percocet tablets from the Pyxis for the patient when the physician's order called for the administration of 2 tablets of Percocet to the patient every *4 hours* as needed. Respondent failed to chart the administration of any of the Percocet on the patient's MAR and otherwise account for the disposition of the 4 Percocet tablets.
- l. On April 30, 2008, between 0322 and 0626 hours, respondent withdrew a total of 4 Percocet tablets from the Pyxis for the patient when the physician's order called for the administration of 2 tablets of Percocet to the patient every *4 hours* as needed. Respondent failed to chart the administration of any of the Percocet on the patient's MAR and otherwise account for the disposition of the 4 Percocet tablets.

8. Respondent self-enrolled in the Maximus Diversion Program (Maximus or diversion) on May 22, 2008.² She was terminated from Maximus on November 17, 2009.

² Business and Professions Code section 2770 provides:

It is the intent of the Legislature that the Board of Registered Nursing seek ways and means to identify and rehabilitate registered nurses whose competency may be impaired due to abuse of alcohol and other drugs, or due to mental illness so that registered nurses so afflicted may be rehabilitated and returned to the practice of nursing in a manner which will not endanger the public health and safety. It is also the intent of the Legislature that the Board of

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Pursuant to Business and Professions Code section 2770.11,³ Maximus notified the Board in writing that respondent was terminated from diversion and that she "has been determined to be a threat to the public or his or her own safety." The notice summarized the reasons for respondent's termination from diversion, as follows:

The Diversion Evaluation Community closed this case with the status of a public risk. She repeatedly had issues with compliance. Since June of 2009 she has had seven missed calls to FirstLab. Additionally, her monthly paperwork was received late for five months of 2009. Ms. Jenkins was informed on 11/2/09 that the DEC Consultant would request that she be terminated from the program if there were any more compliance issues. Ms. Jenkins then missed another call to FirstLab on 11/14/09. The dec [Diversion Evaluation Committee] members unanimously voted to terminate Ms. Jenkins from the Diversion Program.

Maximus Compliance Notes confirmed that respondent missed a call to FirstLab on September 18, 2009 and September 26, 2009. Respondent received a compliance letter dated September 28, 2009, telling her she had missed a call to FirstLab. After each missed call, diversion personnel contacted respondent. Respondent denied she failed to call in on September 28, 2009, and said that she thought she had called in on September 22, 2009. She

Registered Nursing shall implement this legislation by establishing a diversion program as a voluntary alternative to traditional disciplinary actions.

³ Business and Professions Code section 277.11, provides:

(a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by the committee and approved by the program manager. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

was told to produce telephone records, but failed to do so. Compliance notes confirmed that respondent's June 2009 compliance report was received late. Respondent's July 9, 2009 monthly self-report and 12-step attendance card were received late, on August 13, 2009. Respondent had also been sent compliance letters regarding her late reports.

9. Respondent's diversion of controlled substances from Enloe resulted in a criminal prosecution in Butte County Superior Court. Respondent was charged with obtaining the controlled substances Hydromorphone and Hydrocodone by fraud, between February 5, 2008 and May 5, 2008. On May 2, 2012, respondent was convicted⁴ on her plea of no contest to a charge of violating Health and Safety Code section 11173, subdivision (a), (Obtaining Controlled Substance By Fraud), a misdemeanor. She was sentenced to a term of probation. Details of the sentencing and conditions of probation were not in evidence. Respondent's conviction is substantially related to the duties, qualifications and responsibilities of a registered nurse within the meaning of Business and Professions Code section 2761, subdivision (f).

Respondent's Testimony and Rehabilitation Evidence

10. Respondent received a Bachelor of Science degree in nursing from Chico State in December 2001. She was employed at Enloe in January 2002. She testified that in mid-2007, she was told that she was drawing more narcotics than other nurses, but since she was floating on the floor she had more patients. She testified that "If I was giving medications as call lights went on...I... would have a higher number of withdrawals." Respondent explained that she and her supervisors discussed this and "the issue was done." Respondent's explanation was notable in that she greatly minimized this incident. She made it appear as if she simply brought it to her supervisor's attention that she was working in a floating capacity and the matter was resolved. She did not reveal or explain why Enloe's audit for June and July 2006 found that narcotics she had withdrawn were not accounted for in patient records. She did not reveal or explain that she had received employee discipline in the form of written counseling for her conduct.

11. Respondent testified that she had medical problems since the birth of her daughter in 2004. When pregnant with her son in 2006, she was very sick and lost 35 pounds. After he was born by cesarean section, she had six or seven procedures to stop vaginal bleeding and her physicians recommended a hysterectomy. After each surgical procedure (D&C) she had been prescribed Vicodin, Norco and/or Naproxen for pain relief. Respondent wanted to continue working and did not want to undergo a drastic procedure like a hysterectomy. In March or April of 2008, she spoke with Human Resources at Enloe about taking a few weeks off for a hysterectomy and had about a week left to work before she could take time off. This is when she became addicted and diverted drugs as a "coping mechanism beyond treating the pain."

⁴ *The People of the State of California v Joy Marie Jenkins*, Butte County Superior Court No. CM034481.

12. Respondent acknowledged that she had a prescription for narcotics from her treating physician, Dr. Mason, who prescribed narcotics after each surgical procedure. She does not know why she did not ask her physician for medication rather than diverting medications from Enloe. Respondent did not provide any medical records, prescriptions or letters from Dr. Mason.

13. When Enloe confronted her with her drug diversion she referred herself to Maximus. She understood that if she successfully completed the diversion program, there would be no action against her license. According to the diversion contract she went through an initial intake. She was to attend the Chico Recovery Program, an intensive program of at least eight weeks, followed by an after care program of about nine months. She was required to attend daily Narcotics Anonymous (NA), Alcoholics Anonymous (AA) or other 12-step program three times a week as well as attend the nurse support group once a week and have a complete mental health evaluation. She was also required to submit written reports and call a computerized phone system daily to see if she was scheduled for a random drug test that day at FirstLab.

14. Respondent testified that she completed the Chico Recovery Program and the after care program. She attended daily 12-step meetings and the nurse support group meetings. She attended individual counseling with Judy Bartel, LMFT once a week. She did not work in any capacity, as she was focusing on rehabilitation. However, she was terminated from the diversion program in November 2009, because she "missed a couple of phone calls" into the computerized phone system. She also submitted a "report that arrived on the seventh of the month that was supposed to be received on the fifth of the month." She stressed that she missed phone calls, not tests, because, as it turned out, on the days that she failed to call she was not scheduled for testing. Her testimony was confused as to the number of tests that she missed, however she acknowledged she missed two calls near each other. She testified "I do not have an explanation for why I did not call in," but related that one of the dates she was having a joint birthday party for her children and that generally she was in intensive recovery, implying that she was too busy with her recovery to remember to make a phone call every day. She had been doing well in her recovery and testified that she never received letters stating she was non-compliant with submitting her reports, but she did receive two non-compliance letters regarding failing to call in. Her failing to call in was a "silly regrettable error" and she acknowledged that she knew she could be terminated from diversion if she failed to call in.

15. After respondent was terminated from diversion, she continued to follow the program that Maximus had laid out for her. She felt "solid in her recovery" and wanted to "safeguard her recovery." She asked her case manager at Maximus if she could continue random drug testing. She was told there was no mechanism for testing if she was not in the program. She asked her physician, Dr. Gatewood, and two other persons to help her arrange chain of custody random drug testing but they were unable to arrange it.

16. While at Maximus, respondent had been given a release back to work with conditions including a worksite monitor and, for a time, no direct patient care or administration of medication. In July 2010, she obtained employment with APS Healthcare, a health management corporation. She worked as a care coordinator of the MediCal Care Coordination Program. She was responsible for coordinating the health care of chronically ill patients and those with a high use of medical care. Her job involved advocating for these patients, serving as a liaison to increase their health and decrease costs and doing some outreach. Most of her work was done telephonically at home and occasionally she would meet a patient with her/his health care provider. She had no involvement with patient prescriptions.

17. Respondent testified that she was terminated in July 2011, because she was being prosecuted in Butte County Superior Court. Although her supervisor had known she was in recovery, her supervisor determined that a pending criminal conviction could jeopardize the company's contracts and make it ineligible for the provider list for MediCal. Respondent did not provide any evidence from her employer detailing the reasons for her termination or commenting upon her job performance during her one year of employment.

18. Respondent has not found employment since July 2011. She has had some "very promising leads," but potential employers were not willing to employ her with an accusation pending. She enjoyed her job at APS Healthcare and considers it a good job for persons in recovery. She would like to continue in that line of work.

19. Respondent has volunteered at the Esplanade House recovery program for parents with small children. She performed clerical work and "specific life skills stuff." She also volunteered at the Shalom Clinic, a free community healthcare clinic which treats homeless and uninsured. She did not submit documentation relating to this volunteer work.

20. Respondent did not submit in evidence records verifying attendance at AA/NA. These documents were submitted to Maximus through November 2009. She did not produce documents demonstrating attendance at AA/NA meetings, since November 2009. She did not submit evidence from her probation officer or evidence of any drug testing conducted pursuant to the conditions of her probation.

21. Respondent submitted multiple letters of reference. Her sister, who is also a registered nurse, wrote that in the four years since respondent referred herself to diversion she has demonstrated a complete commitment to her individual counseling and support groups. She wrote that respondent has the ability to provide quality and kindhearted nursing care. She wrote that respondent has continued to move forward since May 2008, diligently working on herself, and has been honest and open regarding her mistakes and how those mistakes have impacted her and those around her. She did not comment upon respondent's drug use before or after diversion.

22. Kai Nasset, a member of respondent's nurse support group wrote that respondent has assisted her and many other women greatly in their recovery. Ms. Nasset has

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attended the nurse recovery program with respondent for the last three years. She wrote that respondent "has maintained four years of solid recovery without any BRN requirements or mandates. And even though she didn't complete the diversion program, she speaks with gratitude and respect for the program that provided her the framework to live a fulfilling life in recovery."

23. Shauna Price, RN, MSN wrote that she has known respondent in both a professional and personal capacity for over eight years. She has watched her growth for the last four years and noted that she has gone through "the journey of sobriety." Ms. Price wrote that respondent has been clean and sober since May 13, 2008. Respondent was a mentor to her when Ms. Price became a new nurse at Enloe and Ms. Price was respondent's charge nurse at one time. Ms. Price wrote that respondent delivered exceptional patient care and was always a patient advocate. She never witnessed respondent impaired in the workplace and respondent delivered the highest level of patient care. Her patients frequently requested that she be their nurse. She wrote that respondent has excellent critical thinking skills and is an asset to any nursing team. Ms. Price wrote that respondent has placed her recovery as her top priority and has been four years clean and sober. She is certain that respondent will be able to function as a safe, competent, successful nurse.

24. Sarah Burns, RN wrote that she met respondent in their nurse support group in November 2010. Respondent "shows up regularly and is an integral part of the group." Ms. Burns wrote that respondent is a great listener and offers support and advice to her peers. Ms. Burns has spent time with respondent outside the support group and has become a friend. Respondent has helped Ms. Burns through trying times and has been a support for her. "Her sobriety has never been a question to those that know her." Ms. Burns wrote "It is clear that recovery is of utmost importance in [respondent's] life and she shares in the group the skills and coping mechanisms she has picked up during her period of sobriety." Ms. Burns wrote that she has witnessed respondent go through some tough times and seen her grow stronger as time goes by.

25. Janice Konno, MSW, wrote that she has been working with respondent for over four years as her sponsor. Ms. Konno has nearly 20 years of experience as a MSW working in the social service /substance treatment field. She wrote that respondent has been diligent in her 12 step work "having recently worked them again as she celebrated four years of recovery." She and respondent maintain consistent contact on a weekly and sometimes daily basis. She wrote that respondent is a generous and supportive person who acted as her advocate throughout Ms. Konno's pregnancy and premature birth. She wrote that respondent would see someone struggling in the NA fellowship and will reach out to them. She buys NA and AA books and keeps them in her car to give to people who cannot afford them. She wrote that respondent "has faced the legal and professional wreckage her addiction caused with honesty, accountability and a genuine humility. She is truly a role model for other women in recovery and health care professionals seeking to embrace a new way of life. Her ability to practice self insight, assess her personal responsibility, and seek positive solutions to create lifelong changes is to be commended." She wrote that respondent "uses the tools of program and has taken her recovery very seriously." She wrote that "Although [respondent]

did not complete diversion, she absolutely embodies the intended results-a compassionate, intelligent, skilled RN with substantial time and achievements in recovery."

26. Shirley A. Dietz, RN, wrote that she became a Nurse Support Group Facilitator for the Board in October 2008, and that respondent has actively participated in the group since May 2008. She noted that respondent's attendance has already exceeded the typical three-year mandatory period required by diversion or probation contracts. Ms. Dietz wrote that respondent is very serious about her recovery, continues to work with her sponsor and attend 12-step meetings and stays in touch with women in recovery. "She communicates a comprehensive recovery plan and is a very positive force in our medical recovery group." Ms. Dietz has seen respondent's growth over these last four years and admires her honesty and accountability. She is confident that respondent can work safely as an RN.

27. Julie Bartel, LMFT wrote that respondent completed three years of therapy with her in 2011. She had diagnosed respondent with adjustment disorder with mixed anxiety and depressed mood, opioid dependence-sustained full remission and partner relational problem. She wrote that respondent has participated fully in her treatment and has gone above and beyond what is required or asked of her. Ms. Bartel did not indicate she had any experience or training in drug and alcohol dependence.

28. Respondent's physician, Dannielle Harwood, M.D., wrote in June 2011 that respondent had been under her care since March 2010. Respondent was forthcoming about her history of substance abuse since the first visit. Dr. Harwood wrote that she has no reason to doubt respondent's recovery or her commitment to full physical and psychological health.

29. Respondent submitted in evidence certificates of successful completion of CME requirements.

Appropriate Discipline

30. Complainant maintains that respondent's license should be revoked due to the nature and extent of her diversion and her discharge from diversion as a risk to self or public. Respondent counters that she has been clean and some sober since May 2008 and has participated in extensive rehabilitation. Respondent believes she has demonstrated rehabilitation through her own testimony and the letters submitted in evidence.

31. There are many problems with respondent's evidence of rehabilitation. At the outset, although respondent stipulated to the truth of the allegations in the First Amended Accusation, at hearing she denied that she had diverted Dilaudid, saying that she took "only the pills." The evidence shows that on March 7, 2008, respondent withdrew a 1 ml syringe of Dilaudid for Patient B. She did not record the administration, wasteage or other disposition of the syringe. Three hours later she withdrew another 1 ml syringe of Dilaudid for Patient B, and again failed to document its administration, wasteage or other disposition. The following day, she withdrew a 1 ml syringe of Dilaudid for Patient B, and failed to document its administration, wasteage or other disposition. If indeed, as respondent

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contends, she did not divert the Dilaudid for her own use, she could have administered the medication to Patient B, without recording its administration and subjecting the patient to risk of overdose. The more likely scenario is that respondent was being untruthful at hearing, she did divert the Dilaudid, but was reluctant to admit that she used this powerful injectable medication as well as the "pills."

32. Another problem with respondent's evidence of rehabilitation is the manner in which she mischaracterized her prior discipline at Enloe for withdrawing narcotics and not accounted for them (Finding 10). Again respondent appeared untruthful and reluctant to acknowledge the duration of her drug problem and drug diversion. Acknowledging that she had a problem prior to the March 2008 diversions would defeat her evidence of mitigation: to wit that her diversions began with an addiction to pain medications that were lawfully prescribed after multiple surgeries. Respondent's failure to present any medical evidence, opinion or prescriptions further defeats this evidence of mitigation.

33. Finally, respondent's efforts to downplay her termination from Maximus were problematic (Findings 8 and 14). Clearly, respondent knew she would be terminated from diversion if she did not call in every day to see if she was scheduled for a drug test. Yet, she failed to call in seven times. The only probable and proper inference that can be drawn from her repeated failure to call in is that she did not want to take drug tests on the days she did not call in because the tests might show she had used prohibited substances. Maximus drew this reasonable conclusion as well, and found that respondent posed a risk to herself or others.

34. It is laudable that respondent continued to follow the Maximus program after she was terminated. The evidence is persuasive that she has fully participated in NA, the nurse support program and individual counseling with the Maximus approved counselor. However, participation in these groups and in counseling is not objective evidence that respondent is free from narcotic use. Although respondent may have made some efforts to secure random drug testing, Mr. Anderson testified persuasively that there are many avenues to secure random drug testing services in respondent's area. Additional objective evidence could have come from her last employer, documenting that it was aware of her diversion and documenting her job performance and reason for termination.

35. The Board has developed criteria of rehabilitation,⁵ much of which respondent has not met. The best that can be said about respondent's evidence of rehabilitation is that

⁵ The Board has developed criteria for evaluating rehabilitation.

Criteria to be considered in determining rehabilitation for abuse of alcohol or other drug related offenses include, but are not limited to:

- Successful completion of drug/alcohol treatment program (a minimum of six (6) months duration). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program will include at least the following elements:

-
- Chemical-free treatment philosophy
 - Individual and/or group counseling
 - Random, documented biological fluid screening
 - Participation in nurse (or other professionals') support group(s)
 - Education about addictive disease
 - Adherence to a 12-step recovery program philosophy, or equivalent
 - Written documentation of participation in 12-step recovery groups, or equivalent
- For registered nurse licensees, employment in nursing for a minimum of six (6) months with documentation (from the employer) that the employer was aware of the previous drug or alcohol abuse problems. Documentation must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed nursing functions in a safe and competent manner.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

- A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- B) Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.
- C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.
- D) Recent, dated laboratory analyses or drug screen reports, where appropriate.
- E) Recent, dated performance evaluation(s) from respondent's employer.
- F) Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.

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there is substantial *opinion* evidence that she has not used narcotics since she was terminated from diversion in November 2009. The presumption must be made that she missed the November 14, 2009, call in for random drug testing because she may have tested positive.

36. Complainant contends that respondent is not an appropriate candidate for a probationary license because her evidence of rehabilitation is lacking, she did not take responsibility for the nature and extent of her diversion at hearing, she is on criminal probation and because she has already demonstrated noncompliance with diversion. Complainant's arguments are valid and would put an end to the inquiry if two and a half years had not passed between November 2009 and the date of hearing. The passage of time, without evidence of drug use, coupled with respondent's letters of reference and her continuing involvement in counseling, NA and the nurse support group, suggest respondent may now be an appropriate candidate for a probationary license.

37. Respondent is willing to abide by the terms and conditions of a Board probationary order, but maintains that she has already fulfilled many of the requirements that are part of the Board's probationary conditions: completion of an intensive outpatient program at Chico Recovery Program; participation in 12-step program; and participation in a nurse support group and counseling. Respondent may have completed the eight weeks of intensive outpatient and nine months of follow-up while she was in the diversion program, but her termination from diversion in at-risk status, and the presumption that she was using narcotics through November 2009, indicate she did not *successfully* complete the Chico Recovery Program. Respondent may also have spent a considerable amount of time in counseling, but a determination will be made by a Board approved evaluator, not by respondent, whether continued counseling is necessary. Respondent acknowledged that continued participation in NA and the nurse support group is critical to her continued recovery.

Costs of Investigation and Enforcement

38. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the Administrative Law Judge to direct a licentiate found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Complainant submitted in evidence a certification of costs from the Deputy Attorney General which established that the cost of enforcement/prosecution was \$6,117. Complainant also submitted in evidence the declaration of investigative costs incurred by Board Senior Investigator Robert Anderson in investigating the matter, in the sum of \$18,207.50. The investigation costs are based on an hourly rate of \$161 and consist of 98.50 hours Mr. Anderson spent in 2010-2011 and 14.50

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- G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation.

hours Mr. Anderson spent in 2011-2012. Mr. Anderson's activities are not itemized by type or date.

39. Mr. Anderson prepared two investigative reports, a Final Report dated January 27, 2011, and a May 26, 2011, Supplemental Report. The reports discuss the activities Mr. Anderson engaged in while conducting his investigation. The May 26, 2011, report notes: "On April 13, 2011, Robert Thomas, Butte County Deputy District Attorney, requested that I (Senior Investigator Robert Anderson) provide additional information, conduct interviews and clarification of an attachment from the original investigation of Joy Jenkins, RN. Specifically, Thomas requested the following:

1. Identify and interview the prescribing physicians for patients "A, B and C."
2. Interview the Pharmacist /Custodian of the Pyxis system records. Obtain statements concerning "normal drug usage and how they establish the anomalous usage report."
3. Identify who loaded the Pyxis machines.
4. The value of the medication that was stolen.
5. Location of the Pyxis machines in the hospital.
6. Clarification for attachment #4 (the certified copy of the Pyxis Activity report on Jenkins, state date 2/5 /2008 through 5/4/2008.)
7. Clarification as to the meeting that was held on 5/15/2008, where Jenkins admitted to stealing controlled substances from the hospital's Pyxis."

40. Mr. Anderson's report and his testimony at hearing verify that he conducted the investigation that Mr. Thomas requested. In addition, Mr. Anderson acknowledged at hearing that he traveled to Mr. Thomas's office and attended at least one of the pre-trial sessions at Butte County Superior Court. Mr. Anderson acknowledged that he did not account for any of this time separately from his account of time spent investigating the complaint and preparing his January 27, 2011 Supplemental Report.

41. It is impossible to determine from the declaration of investigative costs the time Mr. Thomas spent preparing this matter for hearing. Only the costs of time spent preparing this matter for hearing are "reasonable costs of the investigation and enforcement of the case." Assisting local authorities in the preparation of criminal cases is not a cost which should be borne by the licensee. Even if one were to assume that the time Mr. Anderson spent up to the date of the Final Report of January 27, 2011, was spent preparing this matter for hearing, costs are only broken out by the 2010-2011 and 2011-2012 years (presumably fiscal years). Accordingly, it would be sheer speculation for the trier of fact to attempt to ascertain what the true reasonable costs should be. Accordingly, complainant has

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failed to establish the reasonable costs of the investigation of the case. Nevertheless, the inference can be properly drawn from the scope of the Final Investigative Report that Mr. Anderson spent at least 10 hours on tasks directly related to the investigation of this matter. Thus, investigative costs of \$1,610 may be awarded.

42. In determining the appropriateness of imposing costs, the Administrative Law Judge must also consider the factors set out in *Zuckerman vs. Board of Chiropractic Examiners* (2002) 29 Cal 4th. 32. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay and whether the scope of the investigation was appropriate to the alleged misconduct.

43. Respondent has a subjective good faith belief in the merits of her position that she has been rehabilitated and she raised a colorable challenge to the proposal of outright revocation of her license. However, respondent's liability for actual investigative costs has been greatly reduced due to complainant's failure to properly identify actual investigative costs in its case in chief. No further reduction is merited under these criteria.

44. Respondent also presented evidence that she does not have the financial ability to pay the full costs. However, respondent's evidence of financial difficulties was not persuasive. The evidence is that respondent has been unable to keep up with a middle-class lifestyle because of the costs of her criminal and civil cases and the costs of her rehabilitation. Respondent's assets have been depleted by her own criminal conduct and her failure to comply with the diversion program. Her husband is a nurse, she has been collecting unemployment, she worked for a year and she has the ability to work. She should be able to pay any costs imposed, in installments.

45. Taking these factors into consideration, the costs of investigation and prosecution of this matter are \$7,727. Respondent may pay the costs to the Board in installment payments, as determined by the Board or its designee.

LEGAL CONCLUSIONS

1. Business and Professions Code (B&P) section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

2. B&P section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

3. B&P section 2761, provides in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

[¶...¶]

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

[¶...¶]

4. B&P section 2762, provides in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

[¶...¶]

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

[¶...¶]

5. Health and Safety Code section 11173, subdivision (a), provides in pertinent part:

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No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge..."

Diversion of Controlled Substances

6. As set forth in the Findings and by respondent's stipulation, the Board has established by clear and convincing evidence, that respondent's license is subject to disciplinary action pursuant to B&P section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by B&P section 2762, subdivision (a). While on duty as a registered nurse, respondent obtained the controlled substances Percocet, Dilaudid, and Norco from her employer by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173, subdivision (a).

False Entries in Hospital/Patient Records

7. As set forth in the Findings and by respondent's stipulation, the Board has established by clear and convincing evidence, that respondent's license is subject to disciplinary action pursuant to B&P section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by B&P section 2762, subdivision (e). While on duty as a registered nurse, respondent falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other records pertaining to the controlled substances Percocet, Dilaudid, and Norco.

Criminal Conviction

8. As set forth in the Findings and by respondent's stipulation, the Board has established by clear and convincing evidence, that respondent's license is subject to disciplinary action pursuant to B&P section 2761 subdivision (f), on the grounds that respondent was convicted of a crime substantially related to the duties and qualifications of a nurse.

Imposition of Costs

9. Under Business and Professions Code section 125.3, the Board may request the Administrative Law Judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Findings 38 through 45, the reasonable costs of investigation and prosecution of this case were established as \$7,727.

10. The matters set forth in Findings 30 through 37 have been considered in determining that it would not be contrary to the public interest to issue respondent a probationary license at this time.

ORDER

Registered Nurse License Number 595747 issued to Respondent Joy Marie Jenkins is revoked. However, the revocation is stayed and respondent is placed on probation for five (5) years on the following conditions.

SEVERABILITY CLAUSE

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) **OBEY ALL LAWS** - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) **COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, respondent's license shall be fully restored.

(3) **REPORT IN PERSON** - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) **RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when she resides outside of California. Respondent must provide written notice to the Board within 15

days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.
- (d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by

the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his or her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(11) COST RECOVERY - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$ \$7,727. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If respondent has not complied with this condition during the probationary term, and respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

(12) VIOLATION OF PROBATION - If respondent violates the conditions of her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare

an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(13) LICENSE SURRENDER - During respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.

(14) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation.

Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish

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good faith efforts by respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(15) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(16) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(17) SUBMIT TO TESTS AND SAMPLES - Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. Respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(18) MENTAL HEALTH EXAMINATION - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the

Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(19) **THERAPY OR COUNSELING PROGRAM** - Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

(20) **ACTUAL SUSPENSION OF LICENSE** - Respondent is suspended from the practice of registered nursing for three (3) months beginning the effective date of this decision.

During the suspension period, all probation conditions are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.

Dated: July 6, 2012


ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

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8
9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

Case No. 2012-156

14 **JOY MARIE JENKINS**
15 **139 Mandalay Court**
16 **Chico, CA 95973**
Registered Nurse License No. 595747

FIRST AMENDED ACCUSATION

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing ("Board"),
23 Department of Consumer Affairs.

24 2. On or about March 6, 2002, the Board issued Registered Nurse License Number
25 595747 to Joy Marie Jenkins ("Respondent"). Respondent's registered nurse license was in full
26 force and effect at all times relevant to the charges brought herein and will expire on July 31,
27 2013, unless renewed.

28 ///

STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct . . .

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

....

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

7. Code section 2770.11 states:

(a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by a committee. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The

1 name and license number of a registered nurse who is terminated for any reason,
2 other than successful completion, shall be reported to the board's enforcement
3 program.

4 (b) If a committee determines that a registered nurse, who is denied
5 admission into the program or terminated from the program, presents a threat to the
6 public or his or her own health and safety, the committee shall report the name and
7 license number, along with a copy of all diversion records for that registered nurse, to
8 the board's enforcement program. The board may use any of the records it receives
9 under this subdivision in any disciplinary proceeding.

10 8. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
11 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
12 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
13 misrepresentation, or subterfuge . . ."

14 COST RECOVERY

15 9. Code section 125.3 provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 CONTROLLED SUBSTANCES

20 10. "Percocet", a brand of oxycodone, is a Schedule II controlled substance as designated
21 by Health and Safety Code section 11055, subdivision (b)(1)(M).

22 11. "Dilaudid", a brand of hydromorphone, is a Schedule II controlled substance as
23 designated by Health and Safety Code section 11055, subdivision (b)(1)(J).

24 12. "Norco", a brand of hydrocodone bitartrate and acetaminophen, is a Schedule III
25 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

26 RESPONDENT'S TERMINATION FROM BOARD'S

27 DIVERSION PROGRAM AS A PUBLIC SAFETY RISK

28 13. On or about May 22, 2008, Respondent was enrolled in the Board's Diversion
Program. On November 17, 2009, the Diversion Evaluation Committee terminated Respondent
from the Diversion Program as a public safety risk due to Respondent's failure to comply with
provisions of the rehabilitation plan.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Diversion of Controlled Substances)**

3 14. Respondent is subject to disciplinary action pursuant to Code section 2761,
4 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
5 subdivision (a), in that while employed as a registered nurse at Enloe Medical Center located in
6 Chico, California, and on duty in the Oncology Department, Respondent obtained the controlled
7 substances Percocet, Dilaudid, and Norco by fraud, deceit, misrepresentation, or subterfuge, in
8 violation of Health and Safety Code section 11173, subdivision (a), as follows: On and between
9 March 7, 2008, and April 30, 2008, Respondent removed various quantities of Percocet, Dilaudid,
10 and Norco from the medical center's Pyxis MedStation (a computerized medication dispensing
11 system requiring password sign-on for access, hereinafter "Pyxis") which had been ordered for
12 Patients A, B, and C, but failed to document the administration of the controlled substances on the
13 patients' Medication Administration Records ("MAR") and otherwise account for the disposition
14 of the medications, as more particularly set forth in paragraph 15 below. Further, in several
15 instances, the quantities of the medications removed from the Pyxis were in excess of the doses
16 ordered by the patients' physicians, and medications were removed before the next scheduled
17 dose was to be administered to the patient.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(False Entries in Hospital/Patient Records)**

20 15. Respondent is subject to disciplinary action pursuant to Code section 2761,
21 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
22 subdivision (e), in that while employed as a registered nurse at Enloe Medical Center located in
23 Chico, California, and on duty in the Oncology Department, Respondent falsified, or made
24 grossly incorrect, grossly inconsistent, or unintelligible entries in hospital, patient, or other
25 records pertaining to the controlled substances Percocet, Dilaudid, and Norco, as follows:

26 **Patient A:**

27 a. On April 4, 2008, at 2323 hours, Respondent withdrew 2 Percocet tablets from the
28 Pyxis for the patient when, in fact, the physician's order called for the administration of only one

1 Percocet tablet to the patient. Further, Respondent failed to chart the administration of the
2 Percocet on the patient's MAR and otherwise account for the disposition of the 2 Percocet tablets.

3 b. On April 5, 2008, at 0303 hours, Respondent withdrew 2 Percocet tablets from the
4 Pyxis for the patient when, in fact, the physician's order called for the administration of only one
5 Percocet tablet to the patient. Further, Respondent failed to chart the administration of the
6 Percocet on the patient's MAR and otherwise account for the disposition of the 2 Percocet tablets.

7 c. On April 9, 2008, at 0106 hours, Respondent withdrew 1 Percocet tablet from the
8 Pyxis for the patient and another Percocet tablet at 0329 hours when, in fact, the physician's order
9 called for the administration of 1 Percocet tablet every 4 hours as needed. Further, Respondent
10 failed to chart the administration of the Percocet on the patient's MAR and otherwise account for
11 the disposition of the 2 Percocet tablets.

12 d. On April 11, 2008, at 2145 hours, Respondent withdrew 1 Percocet tablet from the
13 Pyxis for the patient, but failed to chart the administration of the Percocet on the patient's MAR
14 and otherwise account for the disposition of the 1 Percocet tablet.

15 e. On April 12, 2008, at 0414 hours, Respondent withdrew 2 Percocet tablets from the
16 Pyxis for the patient when, in fact, the physician's order called for the administration of only one
17 Percocet tablet to the patient. Further, Respondent failed to chart the administration of the
18 Percocet on the patient's MAR and otherwise account for the disposition of the 2 Percocet tablets.

19 f. On April 15, 2008, at 2133 hours, Respondent withdrew 2 Percocet tablets from the
20 Pyxis for the patient, but failed to chart the administration of the Percocet on the patient's MAR
21 and otherwise account for the disposition of the 2 Percocet tablets.

22 **Patient B**

23 g. On March 7, 2008, at 1959 hours, Respondent withdrew a 1 ml syringe of Dilaudid
24 from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the
25 patient's MAR and otherwise account for the disposition of the 1 ml syringe of Dilaudid.

26 h. On March 7, 2008, at 2314 hours, Respondent withdrew a 1 ml syringe of Dilaudid
27 from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the
28 patient's MAR and otherwise account for the disposition of the 1 ml syringe of Dilaudid.

1 i. On March 7, 2008, at 2314 hours, Respondent withdrew 1 Norco tablet from the
2 Pyxis for the patient. On March 8, 2008, between 0230 hours and 0431 hours, Respondent
3 withdrew an additional 3 tablets of Norco, for a total of 4 tablets of the medication over a period
4 of approximately 5 and a quarter hours. In fact, the physician's order called for the
5 administration of only *1 tablet of Norco* to the patient every *4 hours* as needed. Further,
6 Respondent failed to chart the administration of any of the Norco on the patient's MAR and
7 otherwise account for the disposition of the 4 Norco tablets.

8 j. On March 8, 2008, at 0324 hours, Respondent withdrew a 1 ml syringe of Dilaudid
9 from the Pyxis for the patient, but failed to chart the administration of the Dilaudid on the
10 patient's MAR and otherwise account for the disposition of the 1 ml syringe of Dilaudid.

11 **Patient C**

12 k. On April 29, 2008, between 2137 and 2326 hours, Respondent withdrew a total of 4
13 Percocet tablets from the Pyxis for the patient when, in fact, the physician's order called for the
14 administration of 2 tablets of Percocet to the patient every *4 hours* as needed. Further,
15 Respondent failed to chart the administration of any of the Percocet on the patient's MAR and
16 otherwise account for the disposition of the 4 Percocet tablets.

17 l. On April 30, 2008, between 0322 and 0626 hours, Respondent withdrew a total of 4
18 Percocet tablets from the Pyxis for the patient when, in fact, the physician's order called for the
19 administration of 2 tablets of Percocet to the patient every *4 hours* as needed. Further,
20 Respondent failed to chart the administration of any of the Percocet on the patient's MAR and
21 otherwise account for the disposition of the 4 Percocet tablets.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Criminal Conviction)**

24 16. Respondent's license is subject to disciplinary action pursuant code section
25 2761(f) on grounds that Respondent was convicted of a crime substantially related to the duties
26 and qualifications of a nurse. The circumstances are as follows:

27 17. On May 2, 2012 in a case captioned *The People of the State of California v Joy*
28 *Marie Jenkins* Butte County Superior Court No. CM034481, Respondent was convicted by her

1 plea of no contest to a charge of violating Health and Safety Code section 11173(a), Obtaining
2 Controlled Substance By Fraud, a misdemeanor. Respondent was charged with obtaining the
3 controlled substances Hydromorphone and Hydrocodone between February 5, 2008 and May 5,
4 2008. Respondent's conviction under this section is substantially related to the duties,
5 qualifications and responsibilities of a registered nurse within the meaning of code section
6 2761(f).

7 **PRAYER**

8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board of Registered Nursing issue a decision:

- 10 1. Revoking or suspending Registered Nurse License Number 595747, issued to Joy
11 Marie Jenkins;
- 12 2. Ordering Joy Marie Jenkins to pay the Board of Registered Nursing the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions
14 Code section 125.3;
- 15 3. Taking such other and further action as deemed necessary and proper.

16
17 DATED: June 21, 2012

18 *for* LOUISE R. BAILEY, M.ED., RN
19 Interim Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

24 SA2011100738